IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 15914 of 2005(T)

OS.343/1980 of PRL.SUB COURT,TRIVANDRUM
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PETITIONER:

MOHAMMED IQBAL, AGED 74 YEARS,
S/O.MOHAMAMED MAIDEEN, B-10, KAWDIYAR GARDENS,
KOWDIYAR, TRIVADNRUM.

BY ADV. SRI.MOHAN JACOB GEORGE

RESPONDENTS:
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1. STATE OF KERALA, REP. BY
CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. ANIL KUMAR, S/O.PRABAHAKARAN,
SARASA MANDIRAM, TC.12/1509, BARTON HILLS,
TRIVANDRUM(DEAD).

3. LAILAKUMARI, D/O.PRABHAKARAN,
TC.12/1509, BARTON HILL, TRIVADNRUM, DO.DO.

4. SATHISH KUMAR, RESIDING AT TC.12/1509,
BARTON HILL, TRIVADNRUM(REP. BY THEIR LEGAL
GUARDIAN LAILAKUMARI, D/O.PRABHAKARAN,
TC.12/1509, BARTON HILLS TRIVANDRUM(3RD RESPONDENT

5. SAJUKUMAR, RESIDING AT TC.12/1509,
BARTON HILLS TRIVADNRUM(REP. BY THEIR LEGAL
GURADIAN LAILAKUMARI, D/O.PRABHAKARAN,
TC.12/1509, BARTON HILLS, TRIVADNRUM
(3RD RESPONDENT)

6. RADHIKA, RESIDING AT TC.12/1509,
BARTON HILL, TRIVANDRUM.

7. BAIJU, RESIDING AT TC.12/1509,
BARTON HILLS TRIVANDRUM.

R1 BY G.P. SMT. SMITHA SUKUMAR

BY ADV. SRI.M.RAMASWAMY PILLAI
SRI.P.M.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE PLAINT IN OS NO. 343 OF 1980 OF THE PRL. SUB COURT, THIRUVANANTHAPURAM.

EXT.P2 COPY OF THE JUDGMENT IN R.P. 316/96 IN S A 757/1989 OF THIS HON'BLE COURT.

EXT.P3 COPY OF I.A.NO. 4026 OF 2000

EXT.P4 TRUE COPY OF THE ORDER IN IA 4026 OF 2000

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C.NO. 15914 OF 2005

Dated this the 31st day of January, 2007

JUDGMENT

This Writ Petition is filed challenging Ext.P4 order issued by the Sub Court declining an application for amendment of the plaint. Petitioner filed the suit in 1980 for a declaration of title over five cents of land that was occupied by the predecessor-in-interest of respondents 2 to 7. During the pendency of the suit, the land claimed by the petitioner was assigned by the Government, as it was a Government puramboke land, to the second defendant who died during the pendency of the suit and consequently respondents 2 to 7 were impleaded as additional defendants. Even though petitioner claims title in respect of the property based on a sale deed executed in 1979 wherein 13.25 cents of property purchased by the petitioner in Sy.No. 2538 of Vanchiyoor Village and the suit was decreed in favour of the petitioner, appeal was allowed by the District Court and confirmed in Second Appeal. However, on review filed by the petitioner, this Court set aside the judgment and decree of the first appellate court and

remanded the matter to the Sub Court. After remand, the petitioner took out a commission and based on Commissioner's report, petitioner filed an application for amendment of the suit to incorporate description of the property in the plaint schedule to cover the property in Sy.No. 2499/2. The Sub Court took into account the inordinate delay in filing the application after 20 years of filing the suit and dismissed the application. Against this order, this Writ Petition is filed under Articles 226 and 227 of the Constitution of India.

2. I have heard counsel for the petitioner and counsel appearing for respondents 2 to 7. Counsel for the petitioner submitted that amendment can be sought at any time during the pendency of the suit, and he has cited decisions of this Court in ABBU V. MUTHU VELAN, 1962 K.L.T. 523, CHUMAR V. NARAYANAN NAIR, A.I.R. 1986 Ker. 236, SOMAN NAIR V. PRATHAPAN, 1986 K.L.T. 844 and that of the Andhra Pradesh High Court in CHERUKUWADA VIJAYA LAXMI V. VELURI SITAPATHI, A.I.R. 2004 NOC 201 (AP). However, I do not think any of the decisions cited directly applies to the facts of this case because petitioner claims title under a sale deed

obtained by him in 1979. Admittedly, the property purchased by the petitioner was in Sy.No. 2538 and not 2499/2. Petitioner has not got the title deed, that is sale deed, amended to cover property in Sy.No. 2499/2. If petitioner is allowed to change the survey number in the suit, then the same will go against petitioner's claim which is based on title deed, that is sale deed, of 1979. It is seen that when petitioner purchased the property, second defendant in the suit was occupying the property with a building and workshop therein. Admittedly there is no recital in the sale deed about the lease arrangement or the right of the petitioner to receive rent from the tenant after sale of property. However, the factual position is that at the time of purchase petitioner was well aware of the possession and enjoyment of the disputed property by the original second defendant in the suit. Second defendant's application for assignment was allowed by the Government in 1980 itself. Therefore if amendment is allowed to cover the property assigned to the second defendant in the suit, then the same will even change the character of the suit because the identity of the property is changed by permitting amendment of the plaint which is based on title

deed. Counsel for the petitioner submitted that sale deed in favour of the petitioner contains property in Sy.No. 2499/2. If that be so, certainly description of the plaint schedule property is a mistake and petitioner is entitled to amend the same. However, since the Sub Court has not taken into account this claim, it is for the petitioner to file a review, if the title deed contains Sy.No. 2499/2. Going by the facts recorded by the Sub Court, there is no justification to interfere with the impugned order.

W.P. is therefore dismissed, but subject to the above observations.

(C.N.RAMACHANDRAN NAIR)
Judge